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 Houtan Petroleum, Inc.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

HOUTAN PETROLEUM, INC.)	Case No. 3:07-cv-5627 SC
)	
Plaintiff,)	<u>JOINT CASE MANAGEMENT</u>
)	<u>STATEMENT</u>
vs.)	
)	Date: May 9, 2008
CONOCOPHILLIPS COMPANY, a Texas)	Time: 10:00 a.m.
corporation and DOES 1 through 10,)	Judge: Hon. Samuel Conti
Inclusive)	Location: Courtroom 1, 17th Floor
)	450 Golden Gate Avenue
Defendants.)	San Francisco, California

Pursuant to the Clerk's Notice of March 20, 2008, Plaintiff Houtan Petroleum, Inc.
 ("Plaintiff" or "Houtan") and Defendant ConocoPhillips Company ("ConocoPhillips") submit
 this joint Case Management Statement.

1 **1. Summary of Facts**

2 Houtan formerly operated a Union 76 gas station in Mountain View, California (the
3 “Station”) as a ConocoPhillips franchisee for approximately 10 years. ConocoPhillips owns the
4 Union 76 brand and associated intellectual property. ConocoPhillips did not own the Station
5 premises, but leased it from a third-party, V.O. Limited Partners (“V.O. Limited”), pursuant to a
6 lease agreement that expired on October 31, 2007 (the “Master Lease”). ConocoPhillips does
7 own the structures, equipment and improvements at the Station. ConocoPhillips formerly
8 subleased the Station premises (including real property, equipment and improvements) to
9 Houtan.

10 The parties’ penultimate sublease and franchise agreement expired on August 31, 2007.
11 The Master Lease between ConocoPhillips and V.O. Limited was set to expire on October 31,
12 2007, and ConocoPhillips had no further option or right to renew the Master Lease.
13 ConocoPhillips contends that it advised Houtan of these facts, but that Houtan still wished to
14 enter a new three-year franchise agreement. ConocoPhillips contends that it provided such an
15 agreement to Houtan in May 2007.

16 The franchise agreement was for a three year term commencing on September 1, 2007,
17 and expiring on August 31, 2010 (the “Franchise Agreement”). ConocoPhillips contends,
18 however, that the Franchise Agreement included a notice of termination pursuant to the
19 Petroleum Marketing Practices Act, 15 U.S.C. section 2801, *et seq.* (the “PMPA”), providing
20 that the Franchise Agreement was thereby terminated effective October 31, 2007.
21 ConocoPhillips contends, and Houtan disputes, that this addendum constituted an effective
22 notice of termination under the PMPA. Houtan executed the Franchise Agreement, including by
23 separately initialing the addendum described above, on July 6, 2007. ConocoPhillips executed
24 the Franchise Agreement on August 6, 2007.

25 On October 18, 2007, Houtan advised ConocoPhillips that it had entered an agreement to
26 lease the Station premises directly from V.O. Limited, and demanded that ConocoPhillips make
27 a bona fide offer to sell its equipment and improvements at the Station to Houtan. Although
28 ConocoPhillips contends that Houtan’s demand was untimely under the PMPA and that

1 ConocoPhillips was therefore under no legal obligation to make such an offer, ConocoPhillips
2 nevertheless offered to sell its property to Houtan for \$340,000. Houtan contends that the terms
3 and conditions of the offer were arbitrary, commercially unreasonable and generally exceeded
4 and failed to approach the fair market value of the improvements and equipment.

5 Upon expiration of the Master Lease, Houtan leased the Station real property directly
6 from V.O. Limited. Although the Franchise Agreement (including Houtan's lease of
7 ConocoPhillips' equipment and improvements) has terminated, and the Court has denied
8 injunctive relief to prevent such termination, Houtan continues to use ConocoPhillips' equipment
9 and improvements. Houtan has not paid any rent to ConocoPhillips for such use since
10 termination of the Franchise Agreement.

11 **2. Legal Issues**

12 The key legal issue to be decided is whether ConocoPhillips' termination of Houtan's
13 franchise complied with the PMPA. ConocoPhillips contends the Court must determine: 1)
14 whether the franchise termination was timely and for a proper reason under the PMPA; 2)
15 whether ConocoPhillips was obligated to make a bona fide offer to sell its equipment and
16 improvements at the Station to Houtan; and 3) if ConocoPhillips was required to make such an
17 offer, whether ConocoPhillips made an offer that complied with the PMPA (i.e., whether the
18 offer was for a price that approached the fair market value of the equipment and improvements).

19 The parties have addressed these issues in the briefing on ConocoPhillips' motion for summary
20 judgment as well as in the parties' trial briefs and other pretrial filings and motions.

21 ConocoPhillips' counterclaims seek recovery of its equipment, and damages resulting
22 from Houtan's retention of the property during the period since the Franchise Agreement
23 terminated. ConocoPhillips contends that Houtan's continued possession of the property is
24 unlawful and in defiance of the Court's order denying preliminary injunctive relief. Houtan
25 contends that the Court's denial of the preliminary injunctive relief was not a conclusive finding
26 of the merits of Houtan's claims and did not constitute an authorization for ConocoPhillips to
27 remove its equipment and improvements from the property during the pendency of this action

28

1 and that under the PMPA, Houtan is not legally obligated to pay any rent for such equipment and
2 improvements.

3 **3. Motions**

4 The following Motions are currently pending before the Court:

5 Docket No. 48: ConocoPhillips' Motion to Strike Plaintiff's Jury Demand;

6 Docket No. 49: Houtan's Motion to Dismiss Counterclaims of
7 ConocoPhillips;

8 Docket No. 53: Houtan's First Motion In Limine To Preclude
9 ConocoPhillips from Introducing Evidence Of Settlement
10 Discussions;

11 Docket No. 54: ConocoPhillips' First Motion In Limine Re: Exclusion of
12 Evidence or Argument Regarding Propriety of
13 ConocoPhillips' Termination of the Parties Franchise
14 Agreement;

15 Docket No. 55: ConocoPhillips' Second Motion In Limine Re: Exclusion
16 of Evidence That ConocoPhillips' Offer to Sell Its
17 Equipment And Improvements to Houtan Was Not Bona
18 Fide;

19 Docket No. 56: ConocoPhillips' Third Motion In Limine Re: Exclusion of
20 Evidence of Lost Profits, Consequential Damages or Other
21 Alleged Actual Damages;

22 Docket No. 57: ConocoPhillips' Fourth Motion In Limine Re: Exclusion of
23 Lay Opinion and Conclusion Testimony by Plaintiff's
24 Employees;

25 Docket No. 58: ConocoPhillips' Fifth Motion In Limine Re: Exclusion of
26 References to or Evidence of Size, Profits or Wealth of
27 ConocoPhillips;

1 Docket No. 59: ConocoPhillips Sixth Motion in Limine Re: Exclusion of
 2 Russel S. Braasch;
 3 Docket No. 62: Houtan's Objection and Motion to Strike Witnesses at Trial
 4 For Failure to Comply With Rule 26 Against
 5 ConocoPhillips;
 6 Docket No. 94: ConocoPhillips' Motion for Summary Judgment.

7 ConocoPhillips' motion for summary judgment (Docket No. 94) is set for hearing on
 8 May 9, 2008, at the time of the Case Management Conference.

9 **4. Discovery**

10 The parties have made initial disclosures and completed the depositions of Ed Haddad
 11 and Andrew Plaine. ConocoPhillips has noticed a site inspection at the Station and anticipates
 12 additional expert depositions. Houtan contends that given the fact that the case is already fully
 13 prepared for trial and Rule 26 expert disclosures have been completed, further discovery should
 14 not be allowed.

15 **5. Relief**

16 Houtan seeks damages resulting from ConocoPhillips' termination of the franchise
 17 agreement, including lost profits and goodwill value of business based on its cessation of supply
 18 of Union 76 branded gasoline and de-branding of the station. Houtan also seeks injunctive relief
 19 compelling ConocoPhillips to make a bona fide offer under the PMPA.

20 ConocoPhillips contends that Houtan, as a matter of law, is not entitled to damages
 21 resulting from the franchise termination because: 1) the termination was proper and timely
 22 under the PMPA; 2) upon termination Houtan had no right to use the Union 76 trademarks or to
 23 purchase fuel from ConocoPhillips; and 3) damages are unavailable under the PMPA where, as
 24 here, the franchisee remains in possession of and continues to operate the subject service station
 25 during the pendency of the litigation. ConocoPhillips further contends that Houtan is not entitled
 26 to injunctive relief requiring a bona fide offer because Houtan waived its right to such an offer.
 27 In any event, ConocoPhillips has already made an offer that complied in all respects with the
 28 PMPA.

1 Houtan denies ConocoPhillips' contentions.

2 **6. Settlement and ADR**

3 The parties completed a settlement conference before Magistrate Judge Larson. The case
4 did not resolve. ConocoPhillips believes that resolution of ConocoPhillips' motion for summary
5 judgment may be necessary to permit further productive settlement discussions. Houtan
6 believes that ConocoPhillips motion for summary judgment is without merit.

7 **7. Narrowing of Issues**

8 ConocoPhillips believes that resolution of ConocoPhillips' motion for summary
9 judgment will dispose of or narrow the issues for trial. Houtan believes that the respective
10 outstanding issues have already been sufficiently addressed in Houtan's Trial Brief (Docket No.
11 76). The parties will confer in a good faith effort to enter stipulations and expedite the
12 presentation of evidence at trial, if appropriate.

13 **8. Scheduling**

14 ConocoPhillips proposes the following schedule:

15 Designation of experts:	May 30, 2008
16 Rebuttal expert reports:	June 11, 2008
17 Discovery cutoff:	June 18, 2008
18 Final pretrial conference:	June 20, 2008
19 Trial:	June 30, 2008

20 Houtan contends that in light of the fact that the case is fully prepared for trial, proposed
21 jury instructions and exhibit books have been prepared, no further discovery should be allowed.

22 **9. Trial:**

23 The parties estimate that a jury trial would last 5-7 days, but if the case is tried to the
24 Court, the parties estimate a 2-4 day trial. These estimates may change, depending on resolution
25 of ConocoPhillips' motion for summary judgment and the parties' motions in limine and other
26 pretrial motions.

27 ConocoPhillips contends that Houtan is not entitled to damages, and is therefore not
28 entitled to a jury trial, as addressed in ConocoPhillips' motion to strike Plaintiff's jury demand

1 (Docket No. 48) and its third motion in limine (Docket No. 56). Houtan disputes these
2 contentions and has opposed these motions (Docket No. 60 and Docket No. 81).

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4 Dated: May 2, 2008

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11 Dated: May 2, 2008

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